Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1236

ELLEN C. MOORE AND LUCILE GREENFIELD,
Appellees,

V.

EDWARD D. CHRISTENSEN,
Appellant,

V.

FRANK S. BROZOVICH AND BETTY BROZOVICH,
husband and wife,
Appellees.

APPEAL FROM THE SUPREME COURT OF WASHINGTON

JURISDICTIONAL STATEMENT

EDWARD D. CHRISTENSEN,
Appellant Propria Persona
387 North 3rd East
Richfield, Utah 84701

4 MARCH 1977

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APPEAL FROM THE SUPREME COURT
OF WASHINGTON

JURISDICTIONAL STATEMENT

Appellants appeals from the order of the Supreme Court of Washington, DENYING PETITION FOR REVIEW, dated 14 December 1976. Appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that important substantial questions are presented which require plenary review.

ORDERS AND OPINIONS BELOW

Reference is made to the Findings of Facts and Conclusions of Law, No. 11616, Dated 22 Nov. 1974, a copy is attached hereto as Appendix B at 2a, Decree No. 11616, Dated 22 Nov. 1974, a copy is attached hereto as Appendix C at 6a, Order No. 11616, Dated 15 Nov. 1974, a copy is attached hereto as Appendix D at 8a, Unpublished Opinion No. 1678-II, Dated 28 July 1976, a copy is attached hereto as Appendix E at 9a, Order No. 1678-II, Dated 12 Aug. 1976, a copy is attached hereto as Appendix F at 11a, and Order No. 44404 (1678-II), Dated 14 Dec. 1976, by the Supreme Court of Washington, Denying Petition for Review, a copy is attached hereto as Appendix G at 12a.

This case is appealed "in order to establish justice", and to recover property wrongfully taken from appellant, in violation of the Constitution of the United States, and the Constitution of the State of Washington.

All previous proceedings were repugnant to the Constitution of the United States, and the Constitution of the State of Washington, in that they ignored the Fourth Amendment of the Constitution of the United States, and the Ninth Amendment of the Constitution of the state of Washington.

This appeal is from the Supreme Court of Washington, Order, Denying Petition for Review, Dated 14 Dec., 1976, 8:20 Notice of Appeal was filed in the Supreme Court of Washington on 18 Jan. 1977, a copy is attached hereto as Appendix A at 1a.

II
JURISDICTION

This is an action brought under 28 U.S.C. § 1257 (3) The Supreme Court of the United States also has jurisdiction where Constitutional provisions are an issue, under Article III, Sec. II, of the Constitution of the United States.

"The privileges and immunities of Citizens of the United States, protected by the IV Amendment, are those arising out of the nature and essential characture of the Federal Government and granted or secured by the Constitution; and Due Process of Law and the equal protection of the laws are secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of powers of government." (Duncan vs Missouri, 152 US 382, 14 S. Ct 570, 38 L Ed 485.)

III
QUESTIONS PRESENTED

Shall the Appellant be protected by the 9th Amendment of the Constitution of the State of Washington, the 1st, 4th, 5th, 9th, and 14th Amendments, and Article I, section 10. clause 1 of the Constitution of the United States, and shall the Judgment and Decree of the Superior Court of the State of Washington for Mason County, and the Opinion of the Court of Appeals of the State of Washington, Division Two, in this action, be nullified, and shall the property taken be returned to the Appellant according to the Certified Survey, Dated July 17, 1971, by Roger D. Lovitt, Registered Professional Land Surveyor?

IV
STATUTE INVOLVED

There can be no statute superior to the right of the Appellant to be secure in his effects, against unreasonable seizure.

KEY: 73 "Where rights secured by Constitution are involved, there can be no rule-making or legislation which would abrogate them." Miranda vs. State of Arizona, U.S. S. Ct., Decided June 13, 1966.

V
STATEMENT OF THE CASE

The case is "The Right of the Appellant to be secure in his effects, against unreasonable seizures, as secured by

the 4th Amendment of the Constitution of the United States, as opposed to the Rights of Appellees Moore and Greenfield to adverse possession, which in this case is prohibited by the 9th Amendment of the Constitution of the State of Washington." The seizure of the Appellants land being unreasonable by reason that the Appellees Moore and Greenfield have over 100 feet of their property, lots 99 and 100, fronting on the road, and the route through the Appellants property is not a way of necessity. The well, being a shallow well, could be moved onto the Appellees property. Also the Right of the Appellant to rely on his warranty Deed, his Purchase Agreement, his Certified Survey, and his Title Insurance, as opposed to his being estopped from the protection of these documents.

VI
REASONS WHY THE QUESTIONS PRESENTED ARE SUBSTANTIAL AND WARRANT PLENARY REVIEW BY THIS COURT

The validity of the Constitution of the United States and the Constitution of the State of Washington are at issue. Proper resolution of this dispute would make Purchase Agreements, Warranty Deeds, Title Insurance, and Certified Surveys meaningful, rather than worthless. County plat records and property tax records would also be made meaningful rather than in error. Proper resolution of this case would make property owners responsible for their acts, when building, rather than rewarding them for their irresponsible errors. Proper resolution of this case would make sellers responsible for their Warranty Deeds and Purchase Agreements rather than exempting them from the provisions therein. Proper resolution of this case would make Surveyors responsible for their surveys, and the certification thereon, rather than exempting them from their certifications. Proper resolution of this case would limit the taking (theft) of private property for private use, to ways of necessity, as provided for in the Constitution of the State of Washington, which is proper and which would improve the establishment of domestic tranquility.

VII
CONCLUSIONS

The foregoing shows, that the Supreme Court has jurisdiction in this matter, and that the questions are important and substantial, requiring plenary review.

Respectfully submitted,

Edward D. Christensen
Appellant Propria Persona
387 North 3rd East
Richfield, Utah 84701.

CERTIFICATE OF SERVICE

I hereby certify that I have on this date, by first class mail, postage prepaid, served three copies of this jurisdictional Statement on each of the parties listed below:

The Supreme Court
State of Washington
Olympia, Washington 98504

Mr. B. Franklin Heuston
Attorney at Law
Angle Building
Shelton, Washington 98584

Mr. Gerald L. Whitcomb
Attorney at Law
Angle Building, Suite 2
Shelton, Washington 98584

Edward D. Christensen

4 MARCH 1977

APPENDIX

APPENDIX A

Notice of Appeal to The Supreme Court of the United States

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

NO. 44404
NOTICE OF APPEAL

ELLEN C. MOORE AND LUCILE GREENFIELD,
Respondents,

vs.

EDWARD D. CHRISTENSEN,
Appellant,

vs.

FRANK S. BROZOVICH AND BETTY BROZOVICH,
Respondents.

NOTICE IS HEREBY GIVEN to the Respondents, Ellen C. Moore and Lucile Greenfield, and B. Franklin Heuston, Attorney at Law, Angle Building, Shelton, Washington 98584, Attorney for Respondents Moore and Greenfield, and Frank S. Brozovich and Betty Brozovich, husband and wife, and Gerald L. Whitcomb Attorney, Angle Building, Shelton, Washington, Attorney for Respondents Brozovich, that Edward D. Christensen, the above named Appellant, appeals to the Supreme Court of the United States from the Judgment, and Decree entered by the Superior Court of Washington, for Mason County, on 22 Nov. 1974, and from the Judgment Affirmed by the Court of Appeals, Division II, on 28 July 1976, by reason of the Order of the Supreme Court of Washington, Denying

Petition for Review, dated 14 December 1976. Cause Nos. 11616 1678-II, and 44404.

Dated this 18 day of January 1977.

/ s / Edward D. Christensen
Edward D. Christensen
Appellant Propria Persona
387 North 3rd East
Richfield, Utah 84701

APPENDIX B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR MASON COUNTY

No. 11616

ELLEN C. MOORE AND LUCILE GREENFIELD,
Plaintiffs,

V.

EDWARD D. CHRISTENSEN,

Defendant and Third Party Plaintiff,

V.

FRANK S. BROZOVICH AND BETTY BROZOVICH,

Third Party Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on regularly for hearing on October 30 and 31, 1974, plaintiffs appearing by and through their attorney, B. Franklin Heuston, the defendant and third party plaintiff appearing by and through his attorney, Herbert H. Fuller, and third party defendants appearing by and through their attorney, Gerald L. Whitcomb, the matter having been heard before the above entitled Court sitting without a jury, witnesses having been sworn, testimony offered and exhibits having been admitted, the Court having fully considered the law and

facts and having announced its decision in favor of the plaintiffs and the third party defendants and against the defendant and third party plaintiff, now makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I

The plaintiffs are the record owners of Tracts 99 and 100, Mading's Sunny Shore Addition No. 3, according to the recorded plat thereof in Mason County, Washington, Volume 4 of Plats, page 89, records of the Auditor of Mason County.

II

The defendant and third party plaintiff, Christensen is the record owner of Tract 101 of the said Mading's Sunny Shore Addition No. 3.

III

The plaintiffs have acquired, by adverse possession that portion of Tract 101 of Mading's Sunny Shore Addition No. 3 which lies within the following described parcel of real estate:

Beginning at a point on the South line of Government Lot 6, Section 5, Township 21 North, Range 2 West, W.M., which is S 89 deg 16 min 50 sec E 1046.04 feet from the West quarter corner of said section 5; thence N 75 Deg 49 min 59 sec E 70.66 feet; thence N 63 deg 10 min 50 sec E 69.19 feet; thence N 67 deg 42 min 13 sec E 115.78 feet; thence N 42 deg 27 min 00 sec W 120 feet; thence S 67 deg 29 min 30 sec W 164.58 feet; thence S 06 deg 31 min 06 sec W 108.11 feet; thence S 36 deg 50 min 18 sec E 13.21 feet more or less, to the point of beginning of this description. EXCEPTING public roads, if any, in that the plaintiffs and their predecessors in interest are now and for more than 10 years prior to September 1972 have been in open, actual, exclusive, notorious, hostile and adverse possession of the same under claim of right and good faith under which they claim to own the same in fee against the whole world.

IV

The property which is the subject of this litigation was recreational in nature and the use and possession thereof by the plaintiffs was periodical, for vacation periods during the summers and for weekends throughout the year and plaintiffs' possession and dominion was of the nature and consistency the same as that of other owners in general throughout the area in holding, managing and caring for property of like nature and condition, and was uninterrupted and continuous for more than ten years prior to September 1972.

V

The Third Party Defendants herein did execute, as grantors a Warranty Deed to Tract 101 of Mading's Sunny Shore Addition No. 3, wherein Defendant and Third Party Plaintiff was named as grantee.

VI

That at all times material hereto, Third Party Defendants BROZOVICH assumed and understood that the true northerly boundary of Tract 101, Mading's Sunny Shore Addition No. 3 was located on a line commencing at point "C" and thence running in a northerly direction along line C to point as depicted on Plaintiff's Exhibit No. 1, and at all times represented to Defendant and Third Party Plaintiff said line as the northerly line of Tract 101.

VII

At no time prior to the execution and delivery of said Deed was Third Party defendant aware of the establishment by the surveyor hired by the Defendant and Third Party Plaintiff of the northerly line of Tract 101 in any other location than that described in II above, nor did Third Party Defendant have knowledge of the map upon which the surveyor showed the existing road to plaintiff's property as being on Lot 101.

VIII

Despite actual knowledge of both the existence of the survey stakes placed by his own surveyor North of the line pointed out to him by Third Party Defendant BROZOVICH, and of the surveyor's map depicting the existing road of Plaintiffs, Third Party Plaintiff CHRISTENSEN did not even discuss with Third Party Defendant BROZOVICH the existence or location of Plaintiffs road or other encroachments upon Tract 101, as the same appeared on Defendant and Third Party Plaintiff's survey.

IX

Defendant and Third Party Plaintiff, with full knowledge of the existence of Plaintiff's road and other improvements and their apparent encroachment upon Tract 101 as surveyed, nevertheless remained silent, and tendered to Third Party Defendant the purchase money to effect the purchase of the property, accepted the aforementioned Deed, and thereby took title to, and possession of, said Tract 101 as grantee. At no time did Third Party Plaintiff call to the attention of Third Party Defendant the fact that there was the possibility of a dispute as to the location of the North line of Tract 101, or the ownership of the property which is the subject matter of this action, and in fact, led Third Party Defendant to believe he was satisfied with the location of the North line of Tract 101 as the same had been pointed out by Third Party Defendant at the time of showing of the property, and Third Party defendant BROZOVICH closed the transaction involving the sale of the property in reliance upon Defendant and Third Party Plaintiffs acceptance of the property as shown.

X

The Defendant and Third Party Plaintiff did not suffer any damages as a result of any acts or omissions on the part of the Third Party Defendant.

Dated this 22 day of Nov., 1974.

/ s / Frank E. Baker
Frank E. Baker, Judge

APPENDIX C

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
FOR MASON COUNTY

No. 11616

ELLEN C. MOORE AND LUCILE GREENFIELD,
Plaintiffs,

V.

EDWARD D. CHRISTENSEN,
Defendant and Third Party Plaintiff,

V.

FRANK S. BROZOVICH, et ux,
Third Party Defendants.

DECREE

This matter having come on regularly for hearing on October 30 and 31, 1974, Plaintiffs appearing by and through their attornev. B. Franklin Heuston, the Defendant and Third Party Plaintiff appearing by and through his attorney, Herbert H. Fuller, and Third Party Defendants appearing by and through their attorney, Gerald L. Whitcomb, the matter having been heard before the above entitled Court sitting without a jury, witnesses having been sworn, testimony offered and exhibits having been admitted, the Court having fully considered the law and facts and having announced its decision in favor of the Plaintiffs and the Third Party Defendants and against the Defendant and Third Party Plaintiff and having made and signed the Findings of Fact and Conclusions of Law.

NOW, THEREFORE, IN CONFORMITY THEREWITH, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the parties above named, and each of them, are

proper parties to this action.

2. That the Court has jurisdiction of the subject matter of this action and the parties hereto.

3. That the Plaintiffs are the owners of the following described real estate situated in Mading's Sunny Shore Addition No. 3 according to the recorded plat thereof in Mason County, Washington, tracts 99 and 100 and a portion of 101 of said Mading's Sunny Shore Addition No. 3 particularly described as follows:

Beginning at a point on the South line of Government Lot 6, Section 5, Township 21 North, Range 2 West W.M. which is S 89 deg 16 min 50 sec E 1046.04 feet from the West quarter corner of said Section 5; thence N 75 deg 49 min 59 sec E 70.66 feet; thence N 63 deg 10 min 50 sec E. 69.19 feet; thence N 67 deg 42 min 13 sec E 115.78 feet; thence N 42 deg 27 min 00 sec W 120 feet; thence S 67 deg 29 min 30 sec W 164.58 feet; thence S 06 deg 31 min 06 sec W 108.11 feet; thence S 36 deg 50 min 18 sec E 13.21 feet, more or less, to the point of beginning of this described tract. EXCEPTING public roads, if any.

4. That the above named defendant and Third Party Plaintiff be and he is hereby perpetually barred and enjoined from claiming, having or asserting any right, title, claim, equity or interest superior to that of the Plaintiffs in and to the property described in paragraph 3 of this decree.

5. That the Plaintiffs' title in and to the property described in paragraph 3 of this decree be and the same is hereby quieted and any cloud which may be upon the title of the plaintiffs therein or thereto is hereby removed.

6. That the plaintiffs have and they are hereby granted judgment against the defendant and third party plaintiff for their costs in this action expended.

7. That the Third Party Plaintiff's claim against Third Party Defendant is hereby dismissed with prejudice, the Third Party Plaintiff shall take nothing by way of his

complaint, and the Third Party Plaintiff and Third Party Defendant shall each assume their own costs arising from the Third Party Complaint.

DATED this 22 day of November, 1974

/ s / Frank E. Baker
Frank E. Baker, Judge

APPENDIX D

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR MASON COUNTY

No. 11616

ELLEN C. MOORE AND LUCILE GREENFIELD,

Plaintiffs,

V.

EDWARD D. CHRISTENSEN,
Defendant and Third Party Plaintiff,

V.

FRANK S. BROZOVICH, et ux,
Third Party Defendants.

ORDER

IT IS HEREBY ORDERED that the motion of the Defendant and Third Party Plaintiff for reconsideration or new trial be and the same is hereby denied.

Done in open Court this 15 day of November, 1974.

/ s / Frank E. Baker
Judge

APPENDIX E

**IN THE COURT OF APPEALS OF
THE STATE OF WASHINGTON
Division Two**

No. 1678-II

**ELLEN C. MOORE AND LUCILE GREENFIELD,
Respondents,**

V.

**EDWARD D. CHRISTENSEN,
Appellant,**

V.

**FRANK S. BROZOVICH AND BETTY BROZOVICH,
Respondents.**

UNPUBLISHED OPINION

PETRIE, C. J.—This is a boundary dispute between owners of lots 100 and 101 of Mading's Sunny Shore Addition No. 3 fronting on Mason Lake in Mason County, together with a dispute between the owner of lot 101 and his predecessor for breach of warranties contained in the predessor's deed. Defendant, Christensen, owner of lot 101, appealed from a judgment (1) relocating the boundary line between the two lots, and (2) dismissing his third-party complaint against Brozovich, his predecessor, for recovery of the fair market value of the land Christensen lost by reason of the boundary relocation. We affirm the judgment.

We consider first the claim of adverse posession. For more than 10 years prior to commencement of this action, Plaintiff Moore not only owned lot 100, but also built and used a road and well, all of which lie within the true boundary of lot 101. As found by the trial Court, this occupation, use and posession has been "open, actual, exclusive, notorious, hostile and adverse . . . under claim of

right and good faith . . ." Thus, title to a portion of lot 101 has been lost to the owners of lot 100 by reason of the protracted period of adverse posession. El Cerrito, Inc. v. Ryndak, 60 Wn.2d 847, 376 P. 2d 528 (1962).

The only remaining question is the quantity of land lost. The trial court accepted a line prepaired by Mr. Lovitt, a surveyor, and described by him as the "closest practical line" of occupation, after Lovitt viewed the road, the well, and the area surrounding a house near the "true" boundary line. From the exhibits and the testimony it appears that one end of that line is a point, designated point "C" and marked "100" on a metal stake, which at all times has been represented to all parties as the southwest corner of lot 100 and the northwest corner of lot 101, even though, in fact, the point extends into lot 101. The other end is the agreed, noncontroversial point on Mason Lake which is the southeast corner of lot 100 and the northeast corner of lot 101. Mr. Lovitt's line proceeds from point "C" easterly and tangentially to the road used by the plaintiffs for more than 10 years. Another internal point on the line was determined by Mr. Lovitt as "the 5-foot or so clearance from the edge of the eaves on the well house . . ."

We find no error in the trial court's determination that plaintiffs are owners of certain property in lot 101 and in its location of the actual boundary line resulting from adverse possession. See O'Brien v. Schultz, 45 Wn. 2d 769, 278 P. 2d 322 (1954).

We turn then to Mr. Christensen's claim for damages against Mr. Brozovich for breach of warranty. The trial Court held that Mr. Christensen was "estopped from asserting liability" against Mr. Brozovich for reasons that (1) at all times, Mr. Brozovich represented to Mr. Christensen that the northwest corner of lot 101 was established at point "C" and the northerly boundary of lot 101 extended easterly from that point; (2) prior to closing of the sale, Mr. Christensen ordered the survey which established to him that the "true" boundary lay northerly of the line represented to him by Mr. Brozovich; (3) at no time prior to closing did Mr. Brozovich have knowledge of a surveyor's establishment of a line northerly of the line

beginning at point "C"; and (4) despite actual knowledge of the results of his survey, Mr. Christensen never discussed with Mr. Brozovich the survey's indication of plaintiff's encroachment upon the property in lot 101.

We agree with the trial court that Mr. Christensen is estopped from claiming damages from Mr. Brozovich for breach of warranty. **Kessenger v. Anderson**, 31 Wn.2d 157, 169 P.2d 289 (1948).

Judgment affirmed.

Pursuant to RCW 2.06.040, as amended by the Laws of 1971, ch. 41, S 1, this opinion will not be published.

/ s / Petrie, C.J.

WE CONCUR:
/ s / Pearson, J.
/ s / Reed, J.

Filed July 28, 1976

APPENDIX F

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION II

No. 1678-II

ELLEN C. MOORE AND LUCILE GREENFIELD,
Respondents,

V.

EDWARD D. CHRISTENSEN,
Appellant,

V.

FRANK S. BROZOVICH AND BETTY BROZOVICH,
Respondents.

ORDER DENYING PETITION FOR REHEARING OR MODIFICATION

The Court has considered this petition for rehearing or modification and has determined that it should be denied. Accordingly, it is

ORDERED that the petition is denied.

DATED this 12th day of August, 1976.

/ s / Vernon R. Pearson
Acting CHIEF JUDGE

APPENDIX G

THE SUPREME COURT OF WASHINGTON

No. 44404 (1678-II)

ELLEN C. MOORE, ET AL,
Respondents,

V.

EDWARD D. CHRISTENSEN,
Petitioner,

V.

FRANK S. BROZOVICH, ET AL,
Respondents.

ORDER DENYING PETITION FOR REVIEW

The Court having considered the petition for review of the decision of the Court of Appeals in this cause,

It is ordered that the petition be and it is hereby denied.

Dated this 14th day of December, 1976.

By the Court:

/ s / Charles F. Stafford
Chief Justice

15 Wn. App. 1038

APPENDIX H

CONSTITUTION OF THE STATE OF WASHINGTON

ARTICLE I—DECLARATION OF RIGHTS

Sec. 16. EMINENT DOMAIN—Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner, and no right-of-way shall be appropriated to the use of any corporation other than municipal until full compensation thereof be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public: Provided, that the taking of private property by the state for land reclamation and settlement purposes is hereby declared to be for public use. (L. 1919, p. 385, Sec. 1.) AMENDMENT 9. Approved November, 1920.